

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

PHILLIP E. BOOSE,)	
)	
Movant,)	
)	
v.)	Case No. 05-0340-CV-W-HFS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

Movant continues to contest issues that were settled, but not to his satisfaction, on appeal. He previously took to the Circuit, and to the United States Supreme Court, contentions that a motion to suppress should have been granted, that the sentencing decision making use of the armed career criminal statute should have been made by a jury, and that related crimes should not have been treated as separate crimes. The Circuit rejected the contentions in March, 2004, in Case Numbered 03-3413 (unpublished decision).

Movant makes the same arguments now, although he has withdrawn his objections to the ruling on the motion to suppress. For reasons stated by the Government, he is not entitled to relief (Doc. 4).

The best justification for further litigation would be that there has been a change of law. On the right to jury question movant relies on United States v. Booker, 125 S. Ct. 738 (2005). One response, among several, is that prevailing procedural ruling by Justice Breyer states that the decision applies to “all cases on direct review.” *Id.* At 769. This effort to turn aside prisoner claims

in closed cases has been widely disregarded by prison litigators, but has been uniformly respected by the lower federal courts. Booker does not aid movant.

A final assertion of a change of law is movant's citation of Shepard v. United States, 125 S. Ct. 1254 (2005). That case dealt with burglary as a countable crime of violence. It deals with the use of extrinsic evidence to characterize the particular offense at issue. Shepard adds nothing new and helpful to movant's claim about relatedness of drug offenses.

For reasons stated by the Government and supplemented here the motion filed under 28 U.S.C. §2255 is hereby DENIED.

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

July 27, 2005

Kansas City, Missouri